

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Section 63.63 Application of Comcast IP Phone, LLC)	WC Docket No. 16-352
)	Comp. Pol. File No. 1352
)	
)	

ORDER

Adopted: November 8, 2016

Released: November 8, 2016

By the Deputy Chief, Competition Policy Division, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant the request for permanent discontinuance authority included in Comcast IP Phone, LLC's (Comcast or Applicant) application, filed pursuant to section 214(a) of the Communications Act of 1934, as amended (the Act),¹ and section 63.63 of the Federal Communications Commission's (Commission) rules.² As explained in further detail below, as of the release date, this Order provides Comcast with authority to permanently discontinue interconnected Voice over Internet Protocol (VoIP) services and associated features offered as Xfinity Voice service (Affected Services), to six customers impacted by emergency road work (Affected Customers) in Sonoma County, California (Service Area).

II. BACKGROUND

2. On September 8, 2016, Comcast filed an application with the Commission requesting authority, under section 214 of the Act and section 63.63 of the Commission's rules, for an emergency discontinuance of the Affected Services.³ In the application, Comcast describes its affected Xfinity Voice service as a service that provides customers with the ability to place both local and long-distance calls using VoIP technology. Comcast states that the Affected Services also include optional features and offerings associated with Xfinity Voice service such as alarm monitoring. According to Comcast, the

¹ 47 U.S.C. § 214(a).

² 47 CFR § 63.63.

³ See Section 63.63 Application of Comcast IP Phone, LLC, WC Docket No. 16-352 (filed Sept. 8, 2016), https://www.fcc.gov/ecfs/search/filings?proceedings_name=16-352&sort=date_disseminated_DESC (Application). Section 63.63(a)(1)-(7) provides the requirements for an emergency discontinuance application and states that, "[t]he request shall make reference to this section and show the following: (1) The effective date of such discontinuance, reduction, or impairment, and the identification of the service area affected; (2) The nature and estimated duration of the conditions causing the discontinuance, reduction, or impairment; (3) The facts showing that such conditions could not reasonably have been foreseen by the carrier in sufficient time to prevent such discontinuance, reduction, or impairment; (4) A description of the service involved; (5) The nature of service which will be available or substituted; (6) The effect upon rates to any person in the community; (7) The efforts made and to be made by applicant to restore the original service or establish comparable service as expeditiously as possible." 47 CFR § 63.63(a)(1)-(7).

Affected Services have been provided via a buried cable that crossed Highway 1 along the Sonoma Coast in California and connected with a Comcast facility located on a sea wall. Comcast states that over time the ocean has gradually eroded the wall which in turn caused Comcast's previously buried cable to be exposed. Comcast adds that the erosion has also undermined the Highway 1 right-of-way, which is maintained by the California Department of Transportation (Cal-Trans). Comcast indicates that, due to these deteriorating conditions, it has been actively negotiating with Cal-Trans for several years to find a solution for relocating or rerouting Comcast's facilities.

3. Comcast asserts that, at an August 4, 2016 meeting with Cal-Trans representatives, it was informed for the first time that Cal-Trans planned to immediately begin excavating the section of Highway 1 under which Comcast's cable is buried, and that service provided by that cable would necessarily be discontinued. Comcast states that, during that meeting, Cal-Trans also notified Comcast that it would not be permitted to relocate or reroute its facilities. Accordingly, Comcast represents that the very next day it hand-delivered written notice of the planned Cal-Trans excavation and concomitant interruption of Comcast's Xfinity Voice service to its six Affected Customers. Comcast indicates that some of the Affected Customers were then disconnected on August 13-14, 2016 and that the remaining customers were disconnected on August 25-26, 2016.

III. DISCUSSION

4. Under section 214(a) of the Act, before a carrier may discontinue service, it must obtain from the Commission "a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby."⁴ The Commission has considerable discretion in determining whether to grant a carrier authority to discontinue, impair, or reduce service pursuant to section 214.⁵ Section 63.63 of the Commission's rules provides further that, in emergency situations, a carrier is automatically granted discontinuance authority for 60 days, beginning the day it files its application, unless the Commission informs it to the contrary within the first 15 days.⁶ This rule anticipates that service will resume when the emergency that necessitated the discontinuance ends, but provides that the applicant may, by the 50th day after seeking discontinuance authority, request renewal of the authority.⁷ In addition, Section 63.63(b) states that "...the Commission may, upon specific request of the carrier and upon a proper showing, contained in such informal request, authorize such discontinuance, reduction, or impairment of service for an indefinite period or permanently."⁸ In accordance with section 63.63(b) of the Commission's rules, authority for Comcast's emergency discontinuance of service was automatically

⁴ Section 214(a) states, in relevant part, that "[n]o carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby; except that the Commission may, upon appropriate request being made, authorize temporary or emergency discontinuance, reduction, or impairment of service, without regard to this section. 47 U.S.C. § 214(a).

⁵ *FCC v. RCA Communications, Inc.*, 346 U.S. 86, 90-91 (1953); see also *Verizon Telephone Companies, Section 63.71 Application to Discontinue Expanded Interconnection Service Through Physical Collocation*, WC Docket No. 02-237, Order, 18 FCC Rcd 22737 (2003).

⁶ 47 CFR § 63.63(b).

⁷ See 47 CFR § 63.63(b).

⁸ 47 CFR § 63.63(b).

granted for 60 days, effective as of the date of its filing on September 8, 2016 through November 7, 2016.⁹

5. In its application, Comcast also included an informal request to permanently discontinue the Affected Services to the Affected Customers.¹⁰ Comcast has indicated that the facilities it used to provide the Affected Services have been destroyed with little notice as a result of Cal-Trans expedited road work and repairs. Comcast explains that the unforeseen loss of these facilities has impacted only six voice customers who received the Affected Services along a stretch of Highway 1 in Sonoma County, California. Comcast has also indicated that Cal-Trans has declined to approve its requests to relocate these facilities with the Cal-Trans right of way, citing the severity of the sea wall's erosion and concerns about the impact that relocation of Comcast's cable and other facilities would have on the surrounding area. Nevertheless, Comcast maintains that it is not the carrier of last resort, and that the Affected Customers in the Service Area have the option of obtaining comparable wireline voice service from AT&T, or wireless service from a number of carriers including AT&T and Verizon. Comcast asserts that there also is no reason to believe that its discontinuance will have any impact on the rates charged to customers in the community. In addition, Comcast states that since the emergency discontinuance of its Xfinity Voice service, all six Affected Customers in the Service Area are confirmed to currently have active voice services.¹¹

6. We conclude that Comcast has made a proper showing in its application and should, therefore, be granted authority to permanently discontinue the Affected Services. We note that the impact of this unforeseen discontinuance of service was mitigated by the limited number of customers affected. We also acknowledge that Comcast's prompt efforts to provide notice of the discontinuance afforded customers a greater opportunity to quickly obtain adequate alternatives. After carefully evaluating the totality of these circumstances, we find that granting Comcast's request for authority to permanently discontinue the Affected Services to the Affected Customers will not adversely affect the public convenience and necessity.¹² We therefore grant Comcast's application and authorize Comcast to discontinue the Affected Services consistent with its filed representations on or after the date this Order is released.

IV. ORDERING CLAUSES

7. Accordingly, pursuant to sections 1, 4(i), and 214 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 214, and sections 0.91, 0.291, and 63.63 of the Commission's rules,

⁹ See 47 C.F.R. § 63.63(b) (stating, in relevant part, that "[a]uthority for the emergency discontinuance, reduction, or impairment of service for a period of 60 days shall be deemed to have been granted by the Commission effective as of the date of the filing of the request, unless, on or before the 15th day after the date of filing, the Commission shall notify the carrier to the contrary.") See also 47 C.F.R. § 63.63(a)(1)-(7). Section 63.63(a)(1)-(7) provides the requirements for an emergency discontinuance application and states that, "[t]he request shall make reference to this section and show the following: (1) The effective date of such discontinuance, reduction, or impairment, and the identification of the service area affected; (2) The nature and estimated duration of the conditions causing the discontinuance, reduction, or impairment; (3) The facts showing that such conditions could not reasonably have been foreseen by the carrier in sufficient time to prevent such discontinuance, reduction, or impairment; (4) A description of the service involved; (5) The nature of service which will be available or substituted; (6) The effect upon rates to any person in the community; (7) The efforts made and to be made by applicant to restore the original service or establish comparable service as expeditiously as possible." 47 C.F.R. § 63.63(a)(1)-(7).

¹⁰ See Application at 4.

¹¹ Letter from Emily J.H. Daniels, Outside Counsel to Comcast IP Phone, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-352, at 1-2 (filed Nov. 8, 2016).

¹² See 47 U.S.C. § 214(a).

47 C.F.R. §§ 0.91, 0.291, 63.63, IT IS ORDERED that Comcast's application to permanently discontinue the Affected Services in the Service Areas IS GRANTED.

8. Pursuant to section 1.103, of the Commission's rules, 47 C.F.R. § 1.103, IT IS ORDERED that the grant is effective upon release of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Ann Stevens
Deputy Chief
Competition Policy Division
Wireline Competition Bureau